

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

NICOLE BROWN, *et al.*,

Plaintiffs,

v.

CALIFORNIA DEPARTMENT OF  
CORRECTIONS, *et al.*,

Defendants.

Case No. 1:20-cv-00466-BAM (PC)

ORDER DIRECTING CLERK OF COURT TO  
RANDOMLY ASSIGN DISTRICT JUDGE TO  
ACTION

FINDINGS AND RECOMMENDATIONS TO  
DISMISS ACTION, WITHOUT PREJUDICE,  
FOR FAILURE TO OBEY A COURT ORDER  
AND FAILURE TO PROSECUTE

(ECF No. 11)

**FOURTEEN (14) DAY DEADLINE**

**I. Background**

Plaintiff Nicole Brown, a non-prisoner, and Plaintiff Freddie L. Smith, a state prisoner, are proceeding *pro se* in this civil rights action under 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On January 26, 2021, the Court issued an order striking Plaintiffs' complaint and motion to proceed *in forma pauperis* from the record for improper signatures and directed Plaintiffs to submit, within thirty (30) days, a complaint properly signed by each plaintiff or a notice of voluntary dismissal, and an application to proceed *in forma pauperis* for each plaintiff. (ECF No. 11.) The Court expressly warned Plaintiffs that failure to comply with the Court's order would result in dismissal of this action for failure to obey a court order, failure to pay the filing fee, and

1 failure to prosecute. (*Id.* at 3.) The deadline has expired, and Plaintiffs have failed to file a  
 2 properly signed complaint or a notice of voluntary dismissal, or properly signed applications to  
 3 proceed *in forma pauperis* as directed.

## 4 **II. Failure to Prosecute and Failure to Obey a Court Order**

### 5 **A. Legal Standard**

6 Local Rule 110 provides that “[f]ailure . . . of a party to comply with these Rules or with  
 7 any order of the Court may be grounds for imposition by the Court of any and all sanctions . . .  
 8 within the inherent power of the Court.” District courts have the inherent power to control their  
 9 dockets and “[i]n the exercise of that power they may impose sanctions including, where  
 10 appropriate, . . . dismissal.” *Thompson v. Hous. Auth.*, 782 F.2d 829, 831 (9th Cir. 1986). A  
 11 court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action,  
 12 failure to obey a court order, or failure to comply with local rules. *See, e.g., Ghazali v. Moran*, 46  
 13 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*,  
 14 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring  
 15 amendment of complaint); *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130–33 (9th Cir. 1987)  
 16 (dismissal for failure to comply with court order).

17 In determining whether to dismiss an action, the Court must consider several factors:  
 18 (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its  
 19 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of  
 20 cases on their merits; and (5) the availability of less drastic sanctions. *Henderson v. Duncan*, 779  
 21 F.2d 1421, 1423 (9th Cir. 1986); *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988).

### 22 **B. Discussion**

23 Here, Plaintiffs’ signed complaint and applications to proceed *in forma pauperis* are  
 24 overdue, and they have failed to comply with the Court’s order. The Court cannot effectively  
 25 manage its docket if Plaintiffs cease litigating their case. Thus, the Court finds that both the first  
 26 and second factors weigh in favor of dismissal.

27 The third factor, risk of prejudice to defendant, also weighs in favor of dismissal, since a  
 28 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action.

1 Anderson v. Air W., 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor usually weighs against  
 2 dismissal because public policy favors disposition on the merits. Pagtalunan v. Galaza, 291 F.3d  
 3 639, 643 (9th Cir. 2002). However, “this factor lends little support to a party whose  
 4 responsibility it is to move a case toward disposition on the merits but whose conduct impedes  
 5 progress in that direction,” which is the case here. In re Phenylpropanolamine (PPA) Products  
 6 Liability Litigation, 460 F.3d 1217, 1228 (9th Cir. 2006) (citation omitted).

7 Finally, the Court’s warning to a party that failure to obey the court’s order will result in  
 8 dismissal satisfies the “considerations of the alternatives” requirement. Ferdik, 963 F.2d at 1262;  
 9 Malone, 833 at 132–33; Henderson, 779 F.2d at 1424. The Court’s January 26, 2021 order  
 10 expressly warned Plaintiffs that their failure to file a properly signed complaint or a notice of  
 11 voluntary dismissal and applications to proceed *in forma pauperis* would result in a dismissal of  
 12 this action for failure to obey a court order, failure to pay the filing fee, and failure to prosecute.  
 13 (ECF No. 11, p. 3.) Thus, Plaintiffs had adequate warning that dismissal could result from their  
 14 noncompliance.

15 Additionally, at this stage in the proceedings there is little available to the Court that  
 16 would constitute a satisfactory lesser sanction while protecting the Court from further  
 17 unnecessary expenditure of its scarce resources. Plaintiffs are attempting to proceed *in forma*  
 18 *pauperis* in this action, apparently making monetary sanctions of little use, and the preclusion of  
 19 evidence or witnesses is likely to have no effect given that Plaintiffs have ceased litigating their  
 20 case.

### 21 **III. Conclusion and Recommendation**

22 Accordingly, the Court HEREBY ORDERS the Clerk of the Court to randomly assign a  
 23 district judge to this action.

24 Further, the Court finds that dismissal is the appropriate sanction and HEREBY  
 25 RECOMMENDS that this action be dismissed, without prejudice, for failure to obey a Court  
 26 order, failure to pay the filing fee, and for Plaintiffs’ failure to prosecute this action.

27 These Findings and Recommendation will be submitted to the United States District Judge  
 28 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**

1 (14) days after being served with these Findings and Recommendation, Plaintiff may file written  
2 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s  
3 Findings and Recommendation.” Plaintiff is advised that failure to file objections within the  
4 specified time may result in the waiver of the “right to challenge the magistrate’s factual  
5 findings” on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v.  
6 Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

7  
8 IT IS SO ORDERED.

9 Dated: March 15, 2021

/s/ Barbara A. McAuliffe  
10 UNITED STATES MAGISTRATE JUDGE  
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